In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-819

LEON PITTMAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a bench trial in the United States District Court for the Western District of Pennsylvania, petitioner was convicted of possessing heroin with intent to distribute, in violation of 21 U.S.C. 841(a)(1). He was sentenced to a term of five years' imprisonment, subject to the parole eligibility provisions of 18 U.S.C. 4208(a)(2), and to a six-year special parole term. The court of appeals affirmed (Pet. App. 12-13). Petitioner contends that there was no probable cause for his arrest and therefore that the heroin discovered on his person during the course of the search incident to his arrest should not have been admitted in evidence at trial.

The facts are set forth in the opinion of the district court denying petitioner's motion to suppress (Pet. App. 7-9; 372 F. Supp. 561, 562). On the evening of December 11, 1973, Sergeant Edward S. Costanza, Agent James Tielsch,

and other state law enforcement officials and agents of the Federal Drug Enforcement Administration, began a surveillance of "Big Dave's" bar in the Hill District of Pittsburgh. This surveillance was based on information received from the federal agency that the bar was being used as a narcotics distribution point (Tr. 4-5; M. Tr. 5-7).[1]

While Sergeant Costanza was conducting this surveillance, petitioner drove up and parked his automobile directly in front of Costanza's vehicle. During the preceding week Costanza received information from two reliable informants that petitioner was actively engaged in distributing narcotics;[2] he also knew that petitioner had been convicted of a federal narcotics violation in 1964 and that he had the reputation of being a narcotics dealer (M. Tr. 3-6, 24-26).

Costanza watched petitioner and his companion, Rosemary Engleman, leave petitioner's car and cross the street toward the bar (Tr. 6-7, 49; M. Tr. 8-9). While they were crossing the street, petitioner gave some currency to Engleman. Petitioner then recrossed the street away from the bar and entered a jitney station, while Engleman entered the bar (Tr. 7-9, 49-50; M. Tr. 9). Engleman remained in the bar a short period of time; when she left the bar she walked over to the jitney station (Tr. 9, 50; M. Tr. 10). Shortly thereafter, she and petitioner left the station, entered the car, and drove off (Tr. 9-10, 50; M. Tr. 10).

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[1]"Tr." refers to the transcript of the proceedings at trial; "M. Tr." refers to the transcript of the hearing on the motion to suppress.

[2]The information given by those informants in the past had resulted in several arrests and convictions (Pet. App. 9).

Costanza followed petitioner's automobile for a short distance, stopped the car, and arrested both petitioner and Engleman (Tr. 10, 50; M. Tr. 10-11). Sixteen half-spoons of heroin were discovered on petitioner's person during the course of the search incident to his arrest; the heroin weighed 7.40 grams and had a street value of about $400 (Tr. 10-11, 31, 35-36; M. Tr. 11).[3]

The district court correctly found probable cause to arrest petitioner in an opinion upon which we rely (Pet. App. 9-10):

> * * * The information received by Sergeant Costanzo [*sic*] from two separate reliable informants and from the D.E.A., while not revealing the basis for the informant's conclusions, was to some degree corroborated by his own knowledge of Pittman's past reputation and conviction as a trafficker in narcotics. Moreover, before Sergeant Costanzo [*sic*] arrested Pittman he had observed him near a known rendezvous point for narcotics distribution, had seen him pass money to Engleman who then went into the distribution point to apparently purchase something for Pittman while he waited a safe distance away at the jitney station, and had observed both defendants leave the vicinity shortly after Engleman had completed her business in "Big Dave's". The conduct of Pittman and Engleman centering around "Big Dave's" was sufficiently suspicious and unusual that, when added to the information from Sergeant

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[3]Petitioner testified on his own behalf at trial (Tr. 56-72). He claimed that the heroin found on his person was for his personal use and that the money that passed between him and Engleman was change for cigarettes (Tr. 58-60). He denied intending to sell or having sold any heroin (Tr. 60). He admitted to a prior conviction for selling heroin (Tr. 69-70).

> Costanzo's [*sic*] reliable confidential sources, the information from the D.E.A., and his personal knowledge about Pittman, and considering the information from all these sources together, Sergeant Costanzo [*sic*] had adequate probable cause on which to arrest Pittman and Engleman.[4]

Since petitioner's arrest was valid, the subsequent search was also. Accordingly, the evidence discovered in the course of that search was admissible at trial. *United States* v. *Robinson,* 414 U.S. 218, 227-229; *Gustafson* v. *Florida,* 414 U.S. 260, 263-266.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,

Solicitor General.

FEBRUARY 1975.

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[4]Petitioner's contention that the government conceded in its court of appeals brief that the information from the two informants was insufficient to meet the underlying circumstances test of *Aguilar* v. *Texas,* 378 U.S. 108, is misleading. The statement in that brief was as follows (Br. 7-8):

> * * * [W]hile the record does not show that the information [Costanza] had received from his two informants met the underlying circumstances test of *Aguilar* v. *Texas,* 378 U.S. 108 (1964), this information was corroborated by the defendant's appearance in the vicinity of "Big Dave's" bar, as well as by the information Sergeant Costanza received from the D.E.A. concerning narcotics being sold at "Big Dave's." We submit that this independent corroboration of the informant information was sufficient to elevate it to the level required by *Aguilar, supra.*